

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA : 1:13CR255-1  
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 V. :  
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 BRIAN ALLEN THORNTON : FACTUAL BASIS

COMES NOW, the United States of America, by and through Ripley Rand, United States Attorney, and shows unto the Court the following factual basis in support of the defendant's plea of guilty to the charges herein:

On October 5, 2012, special agents with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, ("ATF") along with task force officers from the Durham Police Department interviewed a confidential informant ("CI") regarding a barber shop in Durham. During the interview, the CI told officers that Brian Thornton and others sold narcotics from the shop. The CI said that Thornton was also involved in armed robberies and was known to set up and participate in the armed robberies of drug dealers. The CI agreed to participate in controlled purchases of narcotics from Thornton and others at the barber shop.

On October 23, 2012, the ATF, utilizing the CI, purchased approximately five grams of heroin from Thornton. Another individual was present during the transaction and talked to the CI about robbing drug dealers.

On November 9, 2012, ATF, utilizing the CI attempted to

purchase 1¼ ounces of crack cocaine from another individual at the barber shop. During the meeting, the CI indicated that he was buying narcotics for another person who was supplying the money. Thornton talked to the CI about following him back to this person and robbing him.

On March 19, 2013, the CI spoke with law enforcement about Thornton. The CI said that he recently spoke to Thornton and during the conversation Thornton asked him if he knew of "a lick" that he could participate in. "A lick" is a slang reference to a robbery. The CI said that he informed Thornton that he would get back to him.

Two special agents with the bureau of Alcohol, Tobacco, Firearms, and Explosives, hereafter referred to as "Shawn" and "Rob," agreed to go undercover as couriers for a group of Mexican drug dealers who had a drug stash house in Durham.

#### First Meeting

On March 20, 2013, ATF agents monitored a meeting between the CI and Thornton. During this meeting, the CI was equipped with a hidden body wire which recorded the conversation. In preparation for the meeting, the CI placed a phone call to Thornton and agreed to come to the barber shop. The CI was dropped off near the barber shop and monitored by ATF as he went to the business. The CI learned that Thornton had locked himself out of his vehicle and was up the street at Phoenix Square

shopping center. The CI was then monitored as he walked to the shopping center and met with Thornton, who was standing in the parking lot by his red Mustang.

During their conversation, the CI told Thornton that he had been approached by a friend who knew of a drug dealer they could rob. The CI then called Shawn. This phone call was made on speaker, and in the presence of Thornton. During this call, Shawn told Thornton that he worked for Mexican drug dealers, and Thornton agreed to meet Shawn to talk in person about robbing these Mexican drug dealers. Toward the end of the phone call, Thornton brought another individual, later determined to be Jermaine Baines, over to listen in on the conversation. After the call, the CI discussed the robbery plan with Thornton and Baines. One of the individuals (either Thornton or Baines) can be heard on the recording stating that Shawn could drive them to the robbery while they "ran up in there." The CI told Thornton that he would contact him when Shawn was in town.

#### Second Meeting

On March 28, 2013, ATF agents monitored a meeting between the CI, Shawn, and Baines. The meeting occurred at the Kentucky Fried Chicken on Fayetteville Street in Durham. In preparation for this meeting, the CI was equipped with a hidden body wire to record the conversation.

The CI placed a phone call to Thornton and told him that he

was with Shawn and wanted to meet to talk about the robbery. Thornton said that he had just driven to Raleigh but that the CI should call Baines and meet with him to plan the robbery. Before the CI had the opportunity to call Baines, he received a phone call from Baines who stated that he wanted to meet. The CI and Shawn agreed to pick up Baines at his residence on Summit Street in Durham and drive him to the KFC.

After the meeting, the CI reported that the three of them discussed plans for the robbery. Shawn reported that Baines asked him if he thought they should kill the Mexicans who possessed the narcotics. Shawn told Baines that he did not care and Baines responded that it would be cleaner if they just killed everyone associated with the drug stash house. Throughout the conversation, Baines spoke about his participation in previous robberies and his willingness to participate in the current robbery. Baines stated he was familiar with how the "Mexicans" ran their drug operations and stated that he believed there might even be additional people associated with the stash house hiding in the trees outside the residence. Additionally, Baines informed Shawn and the CI that he had previously served time in federal prison at a facility in South Carolina. After the meeting, Baines was driven back to his residence.

### Third Meeting

On April 2, 2013, the CI placed a monitored phone call to Baines and informed him that Shawn and Rob were coming into town the following day and that they wanted to meet. Baines told the CI that he would be ready, but added that he was suffering from a medical condition.

On April 3, 2013, ATF agents and TFO's monitored a second meeting between the CI, Shawn, Rob, and Thornton. The conversation occurred at the McDonald's in downtown Durham. In preparation for this meeting the CI and one of the undercover special agents were both equipped with hidden body wires to record the conversation.

At the beginning of the operation, the CI placed a phone call to Baines and told him that he had made contact with Shawn and Rob and that they were coming to Durham and wanted to meet. Baines informed the CI that he was in the hospital but that the CI should contact Thornton. The CI told Baines to let Thornton know that Shawn and Rob were in town and that they wanted to meet.

The CI then called Thornton to discuss meeting. The CI asked Thornton if he had spoken to Baines. Thornton said that he had. The CI told Thornton that he was going to meet Shawn and Rob at Northgate Mall and wanted him to come and discuss the robbery. Thornton said to call him when Shawn and Rob arrived.

Later, Thornton called back and indicated that he did not want to go to the mall because there were too many police in the area. Thornton said to meet at the McDonald's downtown. Shawn, Rob, and the CI were then monitored as they went to the McDonald's.

Once inside the restaurant, Shawn, Rob, and the CI met with Thornton. During their conversation, Shawn and Rob gave Thornton details about the drug stash house. Shawn and Rob explained to Thornton that there was not any cash inside the residence and that Rob would pick up 2 or 3 kilos of cocaine for delivery. Shawn and Rob told Thornton that while inside, Rob would always see at least an additional 7 kilos of cocaine. Thornton can be heard on the recording asking Rob questions related to his prior experiences going into the stash house, specifically asking him if he has ever seen anyone come in behind him. Once outside the restaurant, Rob told Thornton that the robbery would be dangerous and that he did not have to participate. Thornton responded that he was not worried about getting shot because they would have the drop on the individuals inside. Thornton added that he does not play and if the people inside moved the wrong way, he would "do what he had to do."

On April 4, 2013, the CI reported to ATF agents that Thornton had just come by his residence and asked him to come to his vehicle to see something. The CI said once in the vehicle,

Thornton produced two semi-automatic handguns. The CI stated that Thornton told him that he had obtained the firearms to use during the robbery.

#### Fourth Meeting

On April 11, 2013, Shawn, Rob, and the CI met with Thornton and Baines at the Home Depot on North Point Drive in Durham. In preparation for this meeting the CI's vehicle was wired with video recording equipment. In addition, the CI and one of the undercover special agents were both equipped with hidden body wires to record the conversation. Prior to the operation, ATF and Durham PD units established surveillance positions around the meeting location.

The CI picked up Baines and drove him to the meeting. Thornton drove separately and arrived at the location driving his red in color Mustang. Surveillance units observed at least one other unknown black male in the vehicle with Thornton; however, the unknown individual never exited the vehicle or participated in the conversation.

During this meeting, Shawn and Rob review details about the stash house. Rob indicates that the cocaine is straight from Mexico and pure. Both Thornton and Baines again stated their willingness to participate in the robbery of the drug stash house. Thornton and Baines talked about how they planned to commit the robbery and what each person's role in the robbery

would be. Thornton and Baines both stated that they were going to shoot individuals inside the stash house who were guarding the cocaine while the CI gathered the drugs. Both Thornton and Baines also talked about taking the pure cocaine, cutting it, and re-pressing it to make more kilos to sell. Thornton also advised Shawn and Rob that he intended on bringing a third individual on the day of the robbery to help. No information was provided as to this person's identity. Toward the end of the conversation, Baines told Shawn and Rob that this robbery is easy because he is used to kicking in doors and "laying the whole house down" while snatching individuals out of rooms. Thornton added that normally you have to try to find what you are looking for.

After Shawn and Rob left the meeting, Thornton, Baines, and the CI spoke further about the robbery. Thornton expressed concern about the possibility of more Mexicans who were unaccounted interfering with them as they left the stash house. Baines indicated that he was just going to kill the Mexicans when they went into the house. Thornton and Baines also talked about the possibility of only taking the 3 kilos that Shawn or Rob were supposed to deliver. Thornton and Baines then discussed the option of killing Shawn and Rob. During the ride back, Baines told the CI that when he goes into the stash house he is "not playing" and if anyone moves the wrong way, he's "killing."



### First Attempt

On April 16, 2013, ATF attempted to arrest Thornton and Baines. In preparation, the CI's vehicle was equipped with audio and video recording devices. In addition, the CI was equipped with a hidden body wire to record the conversation. The CI was instructed to pick up Thornton and Baines and bring them to a predetermined location. Additionally, the CI was instructed to inform ATF prior to their arrival if the subjects possessed firearms.

The CI contacted Shawn as he traveled to the meet location. The CI informed Shawn that he, Baines and Thornton were heading to the meet location however they were running late and Baines and Thornton had been unable to obtain firearms needed to conduct the robbery. Shawn and Rob left the meet location. Shortly after Shawn and Rob's departure, ATF surveillance units observed the CI's vehicle arrive.

Upon their arrival at the meet location, Thornton and Baines talked with the CI. Both men expressed their frustration with the CI for telling Shawn that they did not have any firearms. When asked how they were going to commit the robbery without firearms, Thornton responded that they were not going to miss the opportunity to obtain at least 3 kilos of cocaine and that they intended to follow Shawn and Rob to the stash house. Thornton said that they were going to allow Rob to go into the

residence, acquire the delivery of cocaine, and then take it from him after he left. Thornton stated that he would have rammed them with his vehicle if that is what it took to take the cocaine. Thornton told the CI that he was telling Shawn too much and that he need to let happen what was going to happen.

Approximately three weeks later, the CI contacted ATF agents and informed them that he had spoken with Baines. The CI claimed that Baines had expressed interest in attempting the robbery when Shawn and Rob were scheduled to make another drug pick up. Baines told the CI that he had a firearm and that both the CI and Thornton needed to obtain firearms in anticipation of Shawn calling again.

#### Fifth Meeting

On May 20, 2013 ATF agents monitored phone calls between the CI, Baines, and Thornton. During the conversations, the CI informed both men that Shawn was coming through Durham and wanted to speak with them regarding another robbery attempt at the stash house. Thornton and Baines agreed to meet.

On May 22, 2013 Shawn met with the CI, Baines, and Thornton at an Arby's restaurant in Durham. In preparation for this meeting, Shawn was equipped with a hidden body wire to record the conversation.

During the meeting, Shawn told Baines and Thornton that he was disappointed with them because they were unprepared for the

robbery the last time they met. Shawn told the men that he and Rob were still involved with obtaining kilos of cocaine from the stash house. Both Baines and Thornton told Shawn that they still wanted to participate in a robbery, and claimed that they intended to bring two additional individuals with them. Both men told Shawn that they intended on having the two additional men go into the residence with choppers (AK-47's) and shoot anyone inside. Thornton told Shawn that he believed that Rob was a weak link and would eventually be questioned by the police and would give all of them up. Thornton told Shawn that Rob would have to be killed, and Shawn responded that he did not really care as long as he got part of Rob's cut.

After the meeting, the CI told ATF agents that Baines and Thornton continued to talk about the robbery once Shawn left. The CI said that Baines and Thornton no longer wanted to just rob Shawn and Rob but now intended to rob the Mexicans inside the stash house and take all of the cocaine. The CI said that both men talked about bringing two additional men with them to help commit the robbery. The CI said he did not know the identity of the two men but claimed that Baines referred to one of the men as "Mo." The CI said that he believed that Thornton was in debt to his heroin supplier for losing a large quantity of heroin he had received on a front and was motivated to commit the robbery so he could pay off his debt. The CI said Thornton

told him he needed the money from selling the cocaine as soon as he could get it and told the CI that he looked forward to getting ahead.

#### Second Attempt

On June 4, 2013 ATF and DPD personnel attempted to arrest Thornton and Baines. In preparation, the CI's vehicle was equipped with audio and video recording devices. In addition, Shawn and the CI were equipped with hidden body wires

Shawn and Rob informed Baines and Thornton that they were in Durham in anticipation of going to the stash house. ATF agents monitored the CI as he traveled to pick up Baines and bring him to the pre-meet location. ATF surveillance units saw the CI's vehicle meet with a tan SUV known to belong to Thornton. The two vehicles separated and then the SUV was seen arriving at the pre-meet location where Shawn made contact with its occupants.

Shawn said that Thornton and Trayveon Spain were in the vehicle. Shawn said that Spain was in the front passenger seat and possessed a black semi-automatic handgun. Shawn said that he spoke with Spain and questioned him about his participation in the robbery. Shawn said that Spain held the firearm in his hand through the duration of the conversation. Shawn said he informed Spain about the cocaine inside the residence, and told him that there was no money inside. Shawn said that Spain told him that

he understood the circumstances of the robbery he was about to participate in and told Shawn that robberies were "what he did."

After a short period of time the CI arrived at the pre-meet location with Baines. All four men agreed to follow Shawn and Rob to another location where they could prepare for the robbery. Upon their arrival at the new location, officers attempted to arrest Thornton, Baines, and Spain. All three men fled in an attempt to elude capture. All three men were quickly apprehended. At the time of his capture, Spain was holding a semi-automatic handgun in his hand and hand another in his waistband. A third semi-automatic handgun was recovered from the passenger compartment of Thornton's vehicle. In addition, officers recovered a bag containing shirts with "Police" and "Sheriff" on the front.

#### Interviews

All three defendants were taken to the Durham Police Department to be interviewed. All three were placed in separate interview rooms equipped with audio and video recording capabilities. All three were read their Miranda rights. Thornton and Baines both waived and gave statements.

During his interview, Baines stated that he had arrived at the meet location with the intention of committing an armed robbery of the stash house described by Shawn. Baines said that he and the other two men each possessed a handgun for the

purpose of using it as they robbed the cocaine from the stash house. Baines claimed that prior to coming to the arrest location he placed his firearm inside Thornton's vehicle. Baines said that his job was to go in the house and "hold down the door." Baines said that Spain had come with them to the meet location to participate in the robbery. Baines claimed that he had just met Spain prior to the robbery and that Spain had accompanied him and Thornton to a military supply store where they bought the law enforcement clothing. Baines claimed that Spain understood the robbery and what it entailed.

During his interview, Thornton admitted to arriving at the location for the purpose of committing an armed robbery at the stash house. Thornton said he brought a firearm with the intent of using it to take the kilos of cocaine that were inside the house. Thornton claimed that he, Baines, and Spain went together to the military surplus store and purchased the law enforcement apparel. Thornton said he believed that if they wore law enforcement clothing the Mexicans inside the stash house would be less likely to shoot them as they entered. Thornton added that Spain was completely aware of the robbery and the contents

of the residence, and was present because he intended on helping them commit the robbery.

This the 29<sup>th</sup> day of August, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2013, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system to notify: M. Bays Shoaf, Esquire.

Respectfully submitted,

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